

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1925 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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JAYA JAITLEY

Versus

GUJ STATE HANDICRAFTS HANDLOOM DEVPT CORPN LTD

Appearance:

MR GIRISH PATEL for Petitioner
MR BR GUPTA for Respondent No. 1
Mr K G Sheth, AGP for the State

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2000

ORAL JUDGEMENT

By way of filing this petition under Articles 14, 16, 19(1)(G), 21 and 226 of the Constitution of India, the petitioner seeks to challenge the orders of termination of her service placed at Annexures 'I' and

'J' to this petition.

2. The facts may be briefly stated as follows:

By order dated 7.1.1978, placed at Annexure 'A' to this petition, the petitioner was appointed as a part-time liaison officer for Gurjari, New Delhi on the terms and conditions set out in the said appointment orders in the employment of the first respondent, which is shown to be a 100% Government of Gujarat Undertaking.

3. The petitioner states that she was thereafter appointed on the post of Marketing and Design Consultant on a consolidated salary of Rs.2500/- p.m. w.e.f. 1.4.1983 by order of the first respondent dated 30.3.1983 placed at annexure 'B' to this petition. The terms and conditions of her appointment are set out in the said order itself. Her salary was thereafter revised from Rs.2500/- per month to Rs.3000/- (fixed) per month w.e.f. 1.10.1987 in accordance with the orders dated 8.10.1987 placed at Annexure 'F' to this petition.

4. The petitioner claims that she had addressed a letter to the Chairperson of the first respondent for revision of her work as suggested by her in the said letter. A copy of the said letter dated 17.7.1987 has been placed at annexure 'D' to the petition. It may be reproduced for ready reference hereinbelow:

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"Dear Amma,

Some time ago, I had proposed to Mr S K Mohopatra, the previous Managing Director and to Mr S K Randhawa that some revision of my work and responsibilities in Gurjari could be considered. I had also mentioned the matter in a letter and had written to you.

As I have not heard anything in response I would once again like to propose that I could be relieved of the routine work expected of an emporium consultant. I have been doing this now for ten years and feel I would now like to give more time to different aspects of handicrafts development work. I also plan to take up some writing projects.

In Gurjari my salary has remained the same since April 1983. Its present value is naturally less than it was our years ago. Now I have to spend

over Rs.600/- a month on transport just to come to Gurjari for 20 days in the month. Yet on the other hand, I feel that by being linked to routine emporia work and doing only what is expected of the other Consultants, my salary is much higher than theirs which is not really fair. I would like to suggest that I attend only to some aspects of the Corporations work. Where I feel I could be of some better use are (a) work out with design cell the full garment range for all emporia. This could be done quarterly; (b) direct and work out any interior decoration or renovation work required for any emporium, (c) advise, write, plan etc. any publications for promoting handicrafts of Gujarat, (d) advise and work on any special projects such as films, workshops, major exhibitions etc. This would enable me to channel my time and work more fruitfully for the benefit of the Corporation while enabling me to devote time to projects which will provide new challenges and experiences.

I would be grateful if you could please consider this proposal and let me know if some revision of work is possible. If you feel that this is not presently possible, I would like to then submit my resignation from the corporation with effect from 1st September, 1987 and in case you need a good part-time consultant in Delhi, I would like to recommend Mrs Hajrani (Sharma) Badlani who worked earlier with the Corporation in Ahmedabad, while she was unmarried, is very well acquainted with our work as you know.

In any event, my deep affection and concern for the corporation and craftsman of Gujarat will continue and I will be always be ready to help in any capacity.

with regards,

Yours sincerely

Sd/- Jaya Jaitly]]

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5. Through the said letter, the petitioner suggested the revision of her work and fields to be covered in the

in other areas and crafts of Gujarat.

Also the "Gurjaris" are now spreading their wings
in different states, which makes for more work
for our craft-people.

Thank you for every thing, for your help, your
cooperation and your affection all these years."

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8. The Personnel Manager of the first respondent addressed a note to different officers on 3/4.4.1988 saying that the petitioner was no longer working with the first respondent as a consultant w.e.f. 1.4.1988. A copy of the said note is placed at Annexure 'I' to the petition.

9. This would mean that the petitioner's letter at annexure 'D' dated 17.7.1987 has been treated as her intention to quit the job and as a letter of voluntary resignation. The petitioner claims that she did not wish or desire to quit and the said letter was not a letter of her voluntary resignation. It is her allegation that certain officials of the respondent Corporation were not happy with the way of her working and hence, the said letter has been treated to be a voluntary resignation. That, in fact, in the name of acceptance of resignation, the respondent Corporation has terminated her service illegally. That no opportunity was given to her to explain the position. That, therefore, the said letter Annexure 'J' is an illegal order of termination of her service. The petitioner, therefore, challenges the said order of termination of her service.

10. The petitioner, therefore, prays by way of this petition that this Court may grant appropriate writ, order or direction as under:

"(A) declaring the action of the respondents in terminating the services of the petitioners and the letters at Annexure 'I' and 'J' as illegal, unconstitutional, violative of Articles 14 and 16, mala fide and, therefore, null and void and quashing the same;

(B) restraining the respondents from terminating the services of the petitioner and from preventing her from work with the respondent corporation as before;

(C) reinstating the petitioner to her original post with full backwages and other incidental and consequential benefits."

11. On institution of the petition, the Court passed an order for issue of notice and further directed to maintain status-quo. Thereafter, Rule was issued and certain interim orders were passed. However, the position as stands now is very clear. The petitioner is admittedly not in the employment of the respondent corporation. It, therefore, appears that the respondent corporation has already relieved her and hence the interim order has become futile and inoperative. There is no dispute about the same.

12. The petitioner had also addressed letters to the Chairperson of the respondent corporation and to the Government in order to clear her stand that she did not desire to resign from her assignment. However, the respondent corporation does not appear to have responded to her letter dated 9.4.1988 (copy at annexure 'K'). Since she was not in the employment of the Government, the Government also does not appear to have intervened in the matter. The fact remains that her letter has been treated as a letter of resignation and the petitioner is admittedly no more in the employment of the respondent corporation.

13. When the matter was placed on board for final hearing, some adjournments were granted at the instance of the petitioner-side. None appeared for the respondent corporation. No affidavit or document has been filed by the respondent corporation in defence. Since the State has been joined as party-respondent in the petition, Mr K G Sheth, learned AGP appeared for the State.

14. I have heard Mr Girish Patel, Learned Sr.Advocate for the petitioner and Mr Sheth for the State. I have also perused the papers.

15. The things are very clear. The petitioner was initially appointed as part-time liaison officer under order dated 7.1.1978. She was then appointed as Marketing and Design Consultant by order dated 30.3.1983. Para 5 of the conditions show that the appointment was on a contract basis for a period of five years in the first instance which could be terminated with a two months' notice by either party. Her salary was fixed at Rs.2500/which was subsequently raised to Rs.3000/- (fixed) p.m. w.e.f. 1.10.1987 as said in order dated 8.10.1987.

16. Then comes in picture the petitioner's letter dated 17.7.1987 at Annexure 'D'. Mr Patel arguing for the petitioner very strongly contended that the only desire expressed by the petitioner in her letter dated 17.7.1987 was that her work and responsibility be increased and her salary also be enhanced. That, accordingly, her salary was enhanced from Rs.2500/- p.m. to Rs.3000/- p.m. That thereafter, the petitioner had absolutely no grievance and she was working with all sincerity in the respondent corporation. That, she never desired or was interested to resign. That, the respondent corporation has committed serious illegality in treating her letter dated 17.7.1987 as her resignation. That, soon after receiving the letter dated 2.4.1987 (Annexure 'J') from the Chairperson of the respondent corporation, she promptly sent her reply dated 9.4.1988 (Annexure 'K') in order to clarify her position. There she stated that her resignation was conditional and all the suggestions made by her were accepted and hence the issues raised in the said letter of July, 1987 were closed.

17. Since the respondent corporation has opted to remain absent and has not put in its defence through affidavit or documents, it is not possible for this Court to appreciate the circumstances which weighed with the respondent corporation for treating the aforesaid letter of the petitioner dated 17.7.1987 as her desire to resign voluntarily. We also have no other material before us in order to ascertain if there was any other facts, circumstances, document or correspondence on account of which the respondent corporation was prompted to relieve the petitioner on the basis of her letter dated 17.7.1987. It is more so when the action pursuant to the said letter dated 17.7.1987 was taken by the respondent corporation very late in April 1988. The respondent corporation does not appear to have tried to ascertain from the petitioner if it was really a letter of voluntary resignation or not.

18. On a perusal of the petitioner's letter dated 17.7.1987, it cannot be treated to be a letter of voluntary resignation. This letter does carry certain suggestions and if the same could not be acted upon, then the desire to quit was impliedly made. As said above, the petitioner wanted more responsibility probably and presumably in order to earn more salary. The order of her appointment and the order of increase in her salary will go to show that they all carried fixed salary. There was admittedly no provision for running pay scales,

for increment, for other allowances, for avenue of promotion, for any other future benefits. She was required to render services for 6 hours daily. Though her appointment orders showed that she was appointed on part-time basis, she had to render 6 hours' services daily. So looking to the quantum of her work and working hours, she might be thinking of more salary which could be had if and when enhanced responsibility is placed on her shoulders. That is why, she probably required the respondent corporation to go for revision of her work.

19. At the same time, the letter dated 17.7.1987 addressed by her to the respondent corporation cannot be treated to be a letter of voluntary resignation much less an unconditional resignation. The wordings of this letter are significant. There she requested to know if revision of work is possible. Then she made it clear that if it was not presently possible, then she would like to submit her resignation w.e.f. 1.9.1987. This shows that her request mainly and substantially was for revision of her work. This may be with a view to have enhancement in her salary through this demand is not explicit in the letter. Even if we do not touch the salary aspects, the fact remains that she desired at least revision of her work.

20. There is no material before us to ascertain as to what was the decision taken by the respondent corporation with regard to the letter of the petitioner dated 17.7.1987. However, her salary was raised from Rs.2500/- p.m. to Rs.3000/- p.m. w.e.f. 1.10.1987 in terms of annexure 'F'. This would show that the respondent corporation had reacted or responded to the voice of the petitioner favourably. The records do not show or suggest that something else also did take place in between and hence the respondent corporation was prompted to treat the aforesaid letter of the petitioner (dated 17.7.1987) as her resignation.

21. Even the letter dated 17.7.1987 does not appear to be a letter of resignation. It says that she would tender resignation w.e.f. 1.9.1987. This may be treated to be a contemplation or even a future desire or a planning. nothing more. The language of the letter dated 17.7.1987 is very clear on the point. If the petitioner really wanted to send her resignation, she would not write "I would like to then submit my resignation". This suggests that it was really not a resignation but at best it could be treated to be her intention or desire to send resignation if her request was not accepted. AT the same time, when her request was

accepted and salary was enhanced, she, probably, had no grievance and, in fact, she did not tender her resignation after receipt of the said information raising her salary by Rs.500/- p.m.

22. The language of the petitioner's letter dated 17.7.1987 clearly indicates that it was not a letter of resignation. Resignation was to follow if her suggestion or request was not accepted.

23. I am, therefore, of a clear decision that the first respondent was not right in treating the said letter dated 17.7.1987 of the petitioner as her voluntary resignation and in accepting the same as such. In the premises, the letter of acceptance of so-called resignation will have to be considered as letter or order of termination of the service of the petitioner. It is more so, when it is not a defence that the service of the petitioner was terminated on expiry of period of service contract. The termination of service may be otherwise good, valid and legal if it is based on legal and valid ground. Here the second respondent treated the letter dated 17.7.1987 of the petitioner in April, 1988 as a letter of resignation and accepted it as a resignation. This is quite impermissible.

24. Under the aforesaid set of facts and circumstances of the case, it is quite clear that the letter of the first respondent dated 2nd April, 1988 purported to be a letter of acceptance of the so-called resignation of the petitioner is in spirit and reality, an order of termination of service of the petitioner. In the background of the case before me, as mentioned hereinabove, it is not an order of termination simpliciter. The petitioner's letter appears to have been misbranded or misinterpreted or misunderstood or mistaken or misread or wrongly treated as a letter of resignation and therefore, the letter containing the said order of termination of the service of the petitioner without reasonable explanation has to be treated to be illegal.

25. The petitioner has thus succeeded in proving that the impugned order is illegal. The first respondent is after all a State within the meaning of Article 12 of the Constitution of India. It is never expected to act and behave like a private employee. It has to act within four corners of law and rules and to behave like a reasonably prudent person. This has not been done in this matter and hence the impugned order is not sustainable. It is more so when the respondent

Corporation has not defended its case in any manner whatsoever. In the aforesaid view of the matter, this petition is required to be allowed and the impugned order of termination of her order is required to be quashed and set aside. The petitioner is required to be reinstated at the original place.

26. During the course of arguments, it has come out that the petitioner has involved herself in active politics. The first respondent being a State owned Corporation, an employee or officer of the Corporation may not be entitled to carry out such activities. It may depend upon the rules and regulations of this Corporation. It is not clear if the petitioner would now be willing to get back on her old employment which requires her to render service for six hours daily. This would be at a monthly salary of Rs.3000/-. It would be for the petitioner to decide the issue.

Mr Girish Patel, learned Advocate for the petitioner submits that the petitioner, if succeeds in the petition, may be awarded backwages from the date of the order of termination of her service. Considering the aforesaid aspects, facts and circumstances of the case, I am of the view that the petitioner is not entitled to backwages from the date of the impugned orders and she should get wages only from the date she resumes. Firstly, she was a part-time employee and hence was in a position to render services elsewhere during her spare timings. Moreover, her active association with political activities would also stand as an obstacle in her way of getting backwages. Then, there was no agreement before me that the petitioner was not gainfully employed anywhere after the impugned order of termination of her service was passed. Therefore, the said contention is rejected.

27. This petition is accordingly allowed and the impugned orders of termination of petitioner's services at Annexures 'I' and 'J' are ordered to be quashed and set aside and the petitioner is reinstated on her original position with original pay and other service conditions from the date she resumes her duty. Rule is made absolute to the aforesaid extent. No order as to costs. Direct Service is permitted.

11.8.2000 [D P Buch, J.]

msp.

